

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 17**

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**Introduced by Assembly Members ~~Members~~ Member Kehoe**  
**(Coauthors: Assembly Members Chan, Chu, ~~Goldberg, Diaz,~~**  
***Firebaugh, Goldberg, Hancock, Koretz, Laird, Leno, Longville,***  
***Nation, Steinberg, Levine, Lieber, Longville, Montanez, Nation,***  
***Steinberg, Vargas, and Wiggins*)**  
(Coauthors: Senators Burton, Kuehl, and Vasconcellos)

December 2, 2002

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An act to add Section 10295.3 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 17, as amended, Kehoe. State contracts: acquisition of goods or services.

Existing law authorizes the Department of General Services to contract with suppliers to acquire goods and services for state agencies.

This bill would prohibit a state agency from entering into a contract for the acquisition of goods or services with a vendor or contractor ~~who does not offer benefits to domestic partner employees, as defined, that are equal to benefits offered to employees with spouses, who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between the domestic partners and spouses of those employees,~~ except as otherwise specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 10295.3 is added to the Public Contract Code, to read:

10295.3. (a) (1) Notwithstanding any other provision of law, no state agency may enter into any contract for the acquisition of goods or services with a vendor or contractor ~~who does not offer benefits to employees with domestic partners that are equal to benefits offered to employees with spouses, or offer benefits to the domestic partners of employees equal to benefits offered to spouses of employees. who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between the domestic partners and spouses of those employees.~~

(2) For purposes of this section, “domestic partner” means one of two persons who has filed a declaration of partnership with the Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code.

(3) These benefits may include, but are not limited to:

(A) Bereavement leave.

(B) Family medical leave.

(C) Health benefits.

(D) Membership or membership discounts.

(E) Moving expenses.

(F) Pension.

(G) Retirement benefits ~~or travel.~~

(H) *Travel* benefits.

(4) This section does not apply to any contracts executed or amended prior to July 1, 2004, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the state, prior to July 1, 2004, unless and until those contracts or property contracts are amended after June 30, 2004, and would otherwise be subject to this section.

(b) Contractors or vendors shall treat as confidential to the maximum extent allowed by law or by the requirement of the contractor’s or vendor’s insurance provider, any request by an employee or applicant for employment for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee or applicant for employment.

(c) After taking all reasonable measures to find a contractor or vendor that complies with this section, the requirements of this section may be waived under any of the following circumstances:

(1) Whenever there is only one prospective contractor willing to enter into a specific contract with the state agency.

(2) If the contract is necessary to respond to an emergency that endangers the public health or safety and no entity which complies with the requirements of this section capable of responding to the emergency is immediately available.

(3) Where the requirements of this section violate, or are inconsistent, with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any public agency with respect to any grant, subvention, or agreement, provided that a good faith attempt has been made by the agency to change the terms or conditions of any grant, subvention, or agreement to authorize application of this section.

(4) Where there are no qualified responsive bidders or prospective contractors or vendors who could comply with the requirements of this section and the contract is essential to the state and state residents.

(5) Where the contractor or vendor is providing wholesale or bulk water, power or natural gas, the conveyance or transmission of the same, or ancillary services such as spinning reserve, voltage control, or loading scheduling, as required for assuring reliable services in accordance with good utility practice, provided that the purchase of the same may not practically be accomplished through the standard competitive bidding procedures; and further provided that this exemption ~~shall~~ *does* not apply to contractors, vendors, or franchises providing direct, retail services to end users.

(d) In the event that the contractor's or vendor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's or vendor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor or vendor ~~shall~~ *may* not be deemed to discriminate in the provision of benefits if the contractor or vendor conditions providing the benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor or vendor is unable to provide a certain benefit,

1 despite taking reasonable measures to do so, the contractor or  
2 vendor ~~shall~~ may not be deemed to discriminate in the provision  
3 of benefits if the contractor or vendor provides the employee with  
4 a cash payment equal to the amount that the employee contractor  
5 or vendor pays to provide that benefit to the spouse of an  
6 employee.

7 ~~(e) If a vendor or contractor does not discriminate in the~~

8 *(e) A vendor or contractor may not be deemed to discriminate*  
9 *in the provision of benefits between employees with spouses and*  
10 *employees with domestic partners, a vendor or contractor may do*  
11 *or between the domestic partners and spouses of those employees,*  
12 *if the vendor or contractor does not discriminate in the provision*  
13 *of those benefits between employees with spouses and employees*  
14 *with domestic partners, or between the domestic partners and*  
15 *spouses of those employees, in doing any of the following:*

16 ~~(1) Elect~~

17 *(1) Offering the same benefits to employees with domestic*  
18 *partners and employees with spouses and offering the same*  
19 *benefits to domestic partners and spouses of employees.*

20 *(2) Electing to provide benefits to individuals in addition to*  
21 *employees' spouses and employees' domestic partners.*

22 ~~(2) Allow~~

23 *(3) Electing to provide benefits on a basis unrelated to an*  
24 *employee's marital status or domestic partnership status,*  
25 *including but not limited to, allowing each employee to designate*  
26 *a legally domiciled member of the employee's household as being*  
27 *eligible for benefits.*

28 ~~(3) Elect not to provide benefits to employees' spouses or to~~

29 *(4) Electing not to provide benefits to employees based on their*  
30 *marital status or domestic partnership status, or electing not to*  
31 *provide benefits to employees' spouses and to employees'*  
32 *domestic partners.*

33 *(f) Nothing in this section is intended to regulate the*  
34 *contracting practices of any local jurisdiction.*

35 *(g) This section shall be construed so as not to conflict with*  
36 *applicable federal laws, rules, or regulations. In the event that a*  
37 *court or agency of competent jurisdiction holds that federal law,*  
38 *rule, or regulation invalidates any clause, sentence, paragraph, or*  
39 *section of this code or the application thereof to any person or*  
40 *circumstances, it is the intent of the state that the court or agency*

- 1 sever that clause, sentence, paragraph, or section so that the
- 2 remainder of this section shall remain in effect.

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